IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1301 OF 2006

IN

SUIT NO.4206 OF 2000

Sheikhlal F.M.Miya Barmare & Anr. ...Plaintiffs.

V/s.

Mumtaz Mohammed Yakub Barmare & Ors. ...Defendants.

MrC.G.Gavneka i/b.G.S.Hiranandani for the plaintiffs.

CORAM : S.J. VAZIFDAR J.

DATE : 16TH JULY, 2007.

P.C. :-

1. The suit is filed to recover possession of the suit premises namely a structure admeasuring 24 feet X 24 feet and an open plot of land admeasuring 644 sq.feet and for an injunction restraining the defendants from parting with possession of or alienating or encumbering the said premises. The plaintiff has also claimed compensation for wrongful use and occupation of the said suit premises.

2. The plaintiff and defendants are brothers and sisters. The plaintiffs case is that their father acquired the said premises on tenancy basis and carried on business from there. Their father expired in 1993.

3. A suit being S.C.Suit No.6727 of 1999 was filed by some of the defendants against the plaintiffs seeking an order restraining the defendants therein/plaintiffs herein from dispossessing him. By the order dated 1st November,

1999 the Court Commissioner was appointed to visit the suit premises and to report the situation regarding possession of the suit premises. The Commissioner's report dated 4th November, 1999 prima facie shows that plaintiff no. 1 therein i.e. defendant no. 3 herein was in possession. The plaintiffs explanation for that is that they were dispossessed between the night of 3rd November, 1999 and the morning of 4th November, 1999 i.e. prior to the Commissioner's visit.

4. It is important to note that if the Notice of Motion taken out by the defendant in the City Civil Court a detailed and, with respect, a well reasoned order was passed by the learned Judge on 18th November, 1999. The plaintiffs statement before the learned Judge as recorded was that they intended to file a suit for possession. This they have done by filing the present suit itself. One thing is clear. The defendants contention that they were put in exclusive possession, pursuant to an oral agreement was disbelieved prima-facie and in view of the affidavit in reply filed in this suit, the finding is correct. Added to this is the fact that the question as to possession has not been satisfactorily dealt with in the affidavit in reply. In fact, the affidavit in reply is vague, if not silent in this regard.

. In paragraph 8 of the said Judgment the Learned Judge has also recorded that the plaintiffs herein have a right in the suit property. This finding too is justified. There is

nothing to indicate that upon expiry of their father the defendant acquired exclusive right to remain in possession. Nor is the anything on record to indicate that the defendants were in exclusive possession at all.

5. In the circumstances, it is necessary to protect the plaintiffs right. Needless to add that this order is without prejudice to the rights and contentions of the landlord who have adopted proceedings against the parties herein.

6. There is no reason to permit the defendant to enjoy exclusive use of the premises. In the circumstances, the following order is passed :

:: O R D E R ::

i. The Court Receiver High Court, Bombay is appointed as a Receiver of the premises. He shall not dispossess the defendants, but shall permit them to occupy the same on payment of royalty, but without insisting on security.

ii. In the event of the defendants failing to accept the agency, the Court Receiver shall offer the same on the same terms and conditions to the plaintiffs in the first instance.

iii. In the event of neither of the parties being agreeable to accept the agency, the court receiver shall, after issuing advertisements invite bids from third parties. The parties shall be at liberty to bid for the agency in that event.

iv. The defendants are restrained from dispossessing or alienating, encumbering, parting with possession of or creating any third party rights in respect of the suit premises including by surrendering the tenancy rights or compromising the proceedings already initiated or which may be initiated by the landlord.

v. Hearing of the suit is expedite.